



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2004

Mr. Jonathan C.C. Day
Vinson & Elkins, L.L.P.
1001 Fannin Street, Suite 2300
Houston, Texas 77002-6760

OR2004-2044

Dear Mr. Day:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197797.

Texas CASA, Inc. ("Texas CASA"), which you represent, received a request for "all communication of any kind" between Texas CASA and ten named individuals, for the years 1999 through 2003. The requestor specifies that this portion of the request encompasses minutes of any meetings in which the named individuals participated during the period at issue. Furthermore, the requestor seeks copies of all newsletters for the years 2000 through 2003; communications to and from the Texas Department of Family and Protective Services for the years 2001, 2002, and 2003; and information regarding two named private donors specially thanked by Texas CASA in its September 1, 2002 newsletter.¹ You state that Texas CASA has made some of the responsive information available for inspection by the requestor. You contend, however, that portions of the remaining responsive information are excepted from disclosure under sections 552.101, 552.111, and 552.117 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹ We note that the 78th Legislature changed the name of the former Texas Department of Protective and Regulatory Services to the Texas Department of Family and Protective Services.

² We note that you also raise sections 552.107 and 552.131 in your comments to this office, but you have not provided comments explaining why these exceptions should apply to the information at issue. See Gov't Code § 552.301(e)(1)(A). We presume you no longer intend to assert sections 552.107 and 552.131 as exceptions to disclosure in this case.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information made confidential by other statutes. You contend that the information submitted as Exhibits D through M is confidential by law pursuant to section 261.201 of the Family Code. Section 261.201(a) provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201. We note that Texas CASA is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See* Fam. Code §§ 261.301, .401. The records submitted as Exhibits D through M consist of forms for the nomination of Texas CASA volunteer advocates, Child Protective Services caseworkers, and staff of the Texas Department of Family and Protective Services for special recognition by Texas CASA. Thus, we further determine that these records do not otherwise consist of reports of alleged or suspected abuse or neglect, or records used or developed in an investigation of abuse or neglect, within the scope of section 261.201 of the Family Code. Consequently, we determine that the information submitted as Exhibits D through M is not confidential under section 261.201 and is not excepted from disclosure under section 552.101 on that basis.

You also contend that the records in Exhibits D through M are excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993).

An agency’s policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free

discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *See Arlington Indep. Sch. Dist. v. Texas Atty. Gen.*, 37 S.W.3d 152, 160 (Tex. App.—Austin 2001, no writ); Open Records Decision No. 615 at 4-5. Upon review of the submitted information, we determine that the records in Exhibits D through M relate solely to the recognition of child advocacy workers and volunteers by Texas CASA and do not relate to the policymaking processes of Texas CASA. Accordingly, the information submitted as Exhibits D through M may not be withheld under section 552.111 of the Government Code.

You indicate that the submitted documents contain information that may be protected from disclosure by the doctrine of common-law privacy, which is incorporated into the Public Information Act by section 552.101. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Upon review, we find that the submitted documents contain a small amount of information that is protected by common-law privacy. We have marked the information in the submitted documents that Texas CASA must withhold under section 552.101 in conjunction with common-law privacy. The remainder of the information at issue, however, does not reveal highly intimate or embarrassing information about identifiable persons. Consequently, we find that the remaining information is not protected by common-law privacy and may not be withheld under section 552.101 on that basis.

Finally, Exhibits N, O, and P contain information that may be excepted from disclosure under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, Texas CASA may only withhold information under section 552.117(a)(1) on behalf of current or former employees who elected to keep the information confidential pursuant to section 552.024 prior to the date on which Texas CASA received the present request. We have marked the information Texas CASA must withhold under section 552.117(a)(1), provided the employees at issue timely requested to keep the information confidential.

In summary, we have marked information in the submitted documents that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Provided the individuals at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, Texas CASA must withhold the information we have marked in Exhibits N, O, and P pursuant to section 552.117(a)(1) of the Government Code. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 197797

Enc: Submitted documents

c: Mr. Gary W. Gates
2205 Avenue I #117
Rosenberg, Texas 77471
(w/o enclosures)